REMARKS

Claims 1 through 6 are pending in this Application. Applicant acknowledges, with appreciation, the Examiner's indication that claims 2, 3 and 6 contain allowable subject matter. Claims 2, 3 and 6 have been placed in independent form. Applicants submit that the present Amendment does not generate any new matter issue.

Claims 1, 4 and 5 were rejected under 35 U.S.C. 102 for lack of novelty as evidenced by Jones et al.

In the statement of the rejection, the Examiner referred to Figs. 2 through 5 of Jones et al. and to related text portions, asserting the disclosure of an optical communication system corresponding to that claimed. This rejection is traversed.

The factual determination of lack of novelty under 35 U.S.C. 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc. 329 F.3d 1358 (Fed. Cir. 2003); Crown Operations International Ltd. v. Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002).* In imposing a rejection under 35 U.S.C. 102, the Examiner is required to **specifically identify** wherein an applied reference **identically discloses each feature** of a claimed invention. *In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).* That burden has not been discharged. Moreover, there are fundamental differences between the claimed optical communication system and the device disclose by Jones et al. that scotch the factual determination that Jones et al. disclose an optical transmission system identically corresponding to that claimed.

Specifically, in accordance with the claimed invention, channel selection is implemented minimizing the affects of dispersion caused in the trunk line. Specifically, in accordance with the present invention, each of the nodes does **not**, repeat **not**, perform a dispersion compensation for signal channel to be added. Rather, the nodes simply choose a signal channel at which an absolute value of previously calculated accumulated-dispersion from the node itself to the receiving end becomes smallest.

In contradistinction to the present invention, Jones et al. neither disclose nor suggest channel selection as in the claimed invention. The branching unit (18) of Jones et al. drops the signal channel of a specific wavelength and adds the signal channel of the same wavelength as that of the dropped signal channel. The branch unit (18) of Jones et al., in order to cancel the effects of dispersion caused in the trunk line, adds a predetermined dispersion contrary to that in the trunk line to the signal channel to be added by a dispersion compensating fiber. For example, in the structures illustrated in Figs. 3 and 4, of Jones et al., the fiber elements (30), (34) and (36) are provided as a dispersion compensating fiber, and in the structure of Fig. 5, the add and/or drop fibers (20) and (22) function as a dispersion compensating fiber, noting column 5 of Jones et al., lines 1-24. It should, therefore, be apparent that the claimed invention clearly distinguishes over Jones et al., particularly as to the branching unit (18) of Jones et al.

The above argued functionally significant differences between the claimed optical communication system and that disclosed by Jones et al. undermine the factual determination that Jones et al. disclose an optical communication system identically corresponding to that claimed. *Dayco Prods., Inc. v. Total Containment, Inc. 329 F.3d 1358 (Fed. Cir. 2003); Crown Operations International Ltd. v. Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002).* Applicant, therefore, submits that the imposed rejection of claims 1, 4 and 5 under 35 U.S.C. 102

for lack of novelty as evidenced by Jones et al. is not factually viable and, hence, solicit withdrawal thereof.

Applicant again acknowledges, with appreciation, the Examiner's indication that claims 2, 3 and 6 contain allowable subject matter. Claims 2, 3 and 6 have been placed in independent form. Based upon the foregoing, it should be apparent that the imposed rejection has been overcome and, hence, all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

MCDERMOTT, WILL & EMERY

Arthur J. Steiner
Registration No. 26,106

600 13th Street, N.W.
Washington, DC 20005-3096
(202) 756-8000 AJS:MWE:ntb
Facsimile: (202) 756-8087
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